

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

JEROME A. SMITH, #322301,

Petitioner,

v.

ACTION NO. 2:05cv710

GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's conviction on July 9, 2002, in the Circuit Court for the City of Portsmouth, Virginia, for one (1) count of grand larceny. Petitioner was sentenced to fifteen (15) years in prison, of which five (5) years were suspended.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the Magistrate Judge was filed on August 8, 2006, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and

recommendations made by the Magistrate Judge. On August 15, 2006, the Court received Petitioner's Objections to United States Magistrate Judge's Report and Recommendation. The Court received no response from Respondent.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Magistrate Judge's report,<sup>1</sup> and having made de novo findings with respect to the portions objected to, does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on August 8, 2006, with the following exception. The Report and Recommendation incorrectly references petitioner as "White." See Mag. Judge's Rep. & Rec. at 1 n.1. The reference should be to "Smith." It is, therefore, ORDERED that the petition be DENIED and that judgment be entered in favor of Respondent.

Accordingly, the Court FINDS that claim (a) is DENIED as Petitioner has failed to show how the Supreme Court of Virginia's result that counsel was not ineffective in relation to Petitioner's first "confession" was either legally or factually unreasonable; claim (b) is DENIED as Petitioner has not shown that the Supreme Court of Virginia's determination that Petitioner "knowingly and voluntarily waived his Miranda rights," prior to answering

---

<sup>1</sup>These objections consist of a summary of Petitioner's claims and supporting case law, as stated in Petitioner's habeas petition, and addressed by the Magistrate Judge's Report and Recommendation.

questions during his second police interview was either factually or legally unreasonable; subclaim (c)(1) is DENIED as Petitioner failed to show that the Supreme Court of Virginia's denial of this claim was either factually or legally unreasonable; subclaims (c)(2) and (c)(3) are DENIED as without merit; subclaim (c)(4) is DENIED as procedurally defaulted; and claim (d) is DENIED as Petitioner has not shown that the Supreme Court of Virginia's denial of this claim was either legally or factually unreasonable.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

\_\_\_\_\_  
/s/  
Rebecca Beach Smith

Norfolk, Virginia

September 12, 2006